STATE OF MICHIGAN

COURT OF APPEALS

RICHARD E. DOLAN,

Plaintiff/Counterdefendant-Appellee/Cross-Appellant,

and

RONALD D. FECTEAU, PLYMOUTH HILLS ASSOCIATES, PLYMOUTH HILLS II ASSOCIATES, JRF ASSOCIATES, JRF II ASSOCIATES, TWIN HILLS ASSOCIATES, STATE TECH CENTER, GRAND ATOMA ASSOCIATES, WEST NANKIN CROSSINGS, OLYMPIC MEDICAL CENTER, and SOMA DEVELOPMENT COMPANY,

Plaintiffs-Appellees,

v

ROBERT J. CRUTCHER,

Defendant-Appellant/Cross-Appellee,

and

GERALD W. JARDINE, UNITED MORTGAGE & REALTY, and SOMA DEVELOPMENT, INC.,

Defendants-Appellants.

UNPUBLISHED
June 24, 2003

No. 231604
Oakland Circuit Court
LC No. 93-466638-CK

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Following a bench trial, defendants Robert Crutcher, Gerald Jardine, United Mortgage & Realty (UMR), and SOMA Development, Inc. (SOMA) appeal as of right the final judgment in this partnership dispute. Plaintiff Richard Dolan cross-appeals as of right. We affirm.

This is a multi-issue dispute between four partners in a variety of real estate partnerships. Plaintiffs Dolan and Fecteau and defendants Crutcher and Jardine were partners in what are some fairly complex real estate construction and leasing projects. Plaintifffs Dolan, Fecteau, and the individual partnerships, brought this action against defendants in part to recover management fees, which they alleged defendants, through self-dealing, had overcharged to the partnerships. The essence of this dispute was whether defendants Crutcher and Jardine had been directly and indirectly siphoning off partnership profits to themselves and the entities that they alone control.

This case is procedurally fairly complex. The initial complaint was filed in November 1993. The trial court held a two-week bench trial in July 1999. In October 1999, the trial court issued its opinion, making findings with regard to twenty-one disputed issues, some of which favored plaintiffs and some defendants. The parties thereafter filed motions for reconsideration, for additional findings, and for clarification. The court did not hear these motions until January 2000. The court thereafter entered an order granting in part and denying in part plaintiffs' motion for reconsideration and clarification, denying defendants' motion for amended and additional findings of fact and conclusions of law, and denying plaintiffs' motion for injunction and appointment of a limited purpose receiver. Several subsequent hearings for clarification were held in February and March 2000. The trial court entered its final judgment on December 8, 2000.

We review de novo an equitable determination made by a trial court, but the supporting findings of fact are reviewed for clear error. *Forest City Enterprises Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made. *Cristiansen v Gerrish Twp*, 239 Mich App 380; 608 NW2d 83 (2000). Considerable weight must be given to the lower court's findings of fact in light of its special opportunity to hear the evidence presented and see the witnesses before it. *Vergote v Kmart Corp*, 158 Mich App 96, 103; 336 NW2d 229 (1983). Contract and statutory interpretation are also reviewed de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

At the outset we note that almost all of the parties' issues in this appeal regard factual determinations made by the trial court. Because the trial court was in the best position to hear the evidence and judge the witnesses before it, we must give great deference to the trial court's findings in this case.

A partnership is "an association of 2 or more persons, . . ., to carry on as co-owners a business for profit" MCL 449.2. All partners act in a fiduciary capacity. MCL 449.21. Partners have a fiduciary relationship and, in their dealings with each other, are required to exercise the highest standards of good faith. MCL 449.25(2)(c); *Van Stee v Ransford*, 346 Mich 116; 77 NW2d 346 (1956). The fiduciary duty among partners is normally one of full and frank disclosure of all relevant information. *Band v Livonia Associates*, 176 Mich App 95, 113; 439 NW2d 285 (1989). With regard to this case, the parties agree that it was for plaintiffs to show

self-dealing on the part of defendants, then the burden shifted to defendants to show that their conduct was fully disclosed and fair.

With regard to the management fees, defendants Crutcher and Jardine owned UMR, which is the company that provided management services to the partnerships. It is undisputed that the various partnership agreements provided for management fees to be paid to UMR. However, the parties disagree with regard to whether UMR was owed both property management fees and construction management fees, and with regard to what the proper fees should have been. Some of the various partnership agreements provided for a management fee of not more than 6% of the gross rentals from the project.

The trial court determined that a reasonable fee was 4.5% and that anything over 4.5% had to be repaid by defendants. Defendants argue that this determination in effect required them to repay all the construction management fees because during the construction phase of the projects, no rents were received. Plaintiffs argued that defendants were not entitled to a construction management fee. This trial lasted two weeks and the court held several hearings after it rendered its opinion to clarify and reclarify its rulings.[1] The court was painfully aware of the different fees involved. Nothing could be more clear than the court's January 26, 2000 order, in which it stated, "all management fees in excess of 4.5% of rents, whether called property management fees or construction management fees, shall be repaid by Defendants." The judgment reflected the court's decision. Under the circumstances, we are not left with a definite and firm conviction that a mistake was made, and thus, we find no error.

With regard to the amount of the management fees, it appears the trial court arrived at the 4.5% figure as a compromise between defendants' 6% fee and plaintiffs' argument for 3%. Although defendants claimed they were allowed to charge up to 6%, there was testimony that 6% was not a reasonable fee. There was testimony that 6% was at the high end of the range for management fees and plaintiffs testified that 3% was a fair fee. There was no testimony that a 4.5% fee was unfair. Under the circumstances, the trial court did not err in finding that a 4.5% fee was fair.

With regard to whether a $200,000 management fee was paid by Twin Hills and whether a $140,000 management fee was paid by JRF II, there was conflicting evidence regarding whether the fees were paid. These are factual determinations that were properly made by the trial court. After review of the record, we are not convinced that a mistake was made and find no clear error. Further, regarding whether the management fees charged to the Grand Atoma partnership should have been less than the other partnerships, we find no error with the trial court's decision.

Concerning the trial court's decision ordering defendants to repay Fecteau for loans made to the Plymouth Hills partnership, we find no error. Again, the trial court was in the best position to hear the testimony and examine the evidence and credibility of the witnesses. After reviewing the record, we find the court did not err in arriving at the amount it did. Furthermore,

[1] We note that after the trial court entered the final judgment, defendants filed a motion to amend and a hearing was held after which the court denied the motion.

the court did not err in finding that Dolan was a general partner in the partnership, nor in finding that Fecteau should be repaid at the statutory interest rate of 5%.

Both parties raised several issues regarding consulting and construction fees, lease commissions, and financing fees involving the various partnerships. These issues required factual determinations to be made by the trial court. Because the evidence greatly conflicted concerning each of these fees and because the trial court was in the best position to hear and weigh the evidence, after review of the record, we are not left with a definite and firm conviction that a mistake was made. Thus, we find no clear error. Further, with regard to the unpaid rent to JRF Associates from UMR, the trial court ruled that an agreement existed and UMR did not owe the rent. Again, we find no error with the trial court's finding.

The parties raised two issues concerning attorney fees – one with regard to the Twin Hills and Plymouth Hills partnerships, and one with regard to fees for the present action. Generally, attorney fees are not recoverable unless expressly allowed by statute, court rule, judicial exception, or contract. *Rafferty v Markovitz*, 461 Mich 265, 270; 602 NW2d 367 (1999). The decision to award attorney fees and the findings of fact underlying the award are reviewed for clear error. *Solution Source Inc v LPR Associates Ltd Partnership*, 252 Mich App 368, 381; 652 NW2d 474 (2002); *Michigan Ed Employees Mutual Ins Co v Turow*, 242 Mich App 112, 118; 617 NW2d 725 (2000). The determination of the reasonableness of the award is within the trial court's discretion and will be reviewed on appeal for an abuse of discretion. *Bolt v Lansing (On Remand)*, 238 Mich App 37, 61; 604 NW2d 745 (1999). An abuse of discretion exists if an unprejudiced person, considering the facts on which the trial court acted would say that there is no justification for the ruling, or the result is so violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias. *Schoensee v Bennett*, 228 Mich App 305, 314-315; 577 NW2d 915 (1998).

Plaintiffs argue that the trial court failed to properly reallocate the attorney fees resulting from the action involving the Twin Hills partnership and attorney fees involving the Plymouth Hills partnership. The decision regarding whether each of the partners agreed to the borrowing of money from the other partnerships to pay these fees required factual determinations regarding the parties' intent to be made by the trial court. Under the circumstances, we find no error and no abuse of discretion.

With regard to the instant case, the trial court granted each party attorney fees for having to defend the claims against them but refused to grant plaintiffs attorney fees for prosecuting this case against defendants. Plaintiffs argue that the trial court erred in refusing to order that their attorney fees be reimbursed by the partnerships, and further that the trial court erred in ordering payment of Crutcher and Jardine's attorney fees by the partnerships. The court correctly found that attorney fees may be granted in some cases, but attorney fees were not warranted to plaintiffs for prosecuting this case because there was no fraud or willful misconduct on the part of any party in this case. Again, we find no error.

Finally, with regard to whether the trial court should have stayed accrual of interest, we find no error with the court's refusal to stay the accrual of interest. Generally, interest is calculated from the date of the filing of the complaint until the date of satisfaction of the judgment, but exceptions do exist. *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 644; 552 NW2d 671 (1996). A stay of proceedings preventing payment of the judgment abates interest

accumulation during the stay. *Heyler v Dixon*, 160 Mich App 130, 152-153; 408 NW2d 121 (1987). Further, other delays that are not the fault of or caused by the party may stay interest. *Phinney v Perlmutter*, 222 Mich App 513, 540-542; 564 NW2d 532 (1997).

The parties agree that the trial court properly stayed the accrual of interest for the JRF I and II partnerships while those partnerships were in bankruptcy. However, defendants argue that the court should have stayed the accrual of interest as to all partnerships. It is unclear how much of a delay was caused by the bankruptcy proceedings. Defendants produced little evidence supporting a stay of the accrual. Under the circumstances, the trial court properly stayed the accrual of interest as to the JRF partnerships only.

Defendants also argue that the trial court should have stayed the accrual of interest in the present case while the trial judge was incapacitated because of illness. Although the delay in this case was not the fault of any party, the delay occurred after defendants were already found liable. The trial court found no reason to toll the interest because the parties were still arguing regarding how much was to be paid. We find no error.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage